

## § 125.2

## 22 CFR Ch. I (4–1–11 Edition)

of the Directorate of Defense Trade Controls.

(d) The controls of this part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Directorate of Defense Trade Controls to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

[58 FR 39310, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

### § 125.2 Exports of unclassified technical data.

(a) *License.* A license (DSP-5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant visit, details of the proposed discussions must be transmitted to the Directorate of Defense Trade Controls for an appraisal of the technical data. Seven copies of the technical data or the details of the discussion must be provided.

(b) *Patents.* A license issued by the Directorate of Defense Trade Controls is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. Requests for the filing of patent applications in a foreign country, and requests for the filing of amendments, modifications or supplements to such patents, should follow the regulations of the U.S. Patent and Trademark Office in accordance with 37 CFR part 5. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.

(c) *Disclosures.* Unless otherwise expressly exempted in this subchapter, a license is required for the oral, visual or documentary disclosure of technical data by U.S. persons to foreign persons. A license is required regardless of the manner in which the technical data is transmitted (e.g., in person, by telephone, correspondence, electronic means, etc.). A license is required for such disclosures by U.S. persons in connection with visits to foreign diplomatic missions and consular offices.

[58 FR 39310, July 22, 1993, as amended at 71 FR 20544, Apr. 21, 2006]

### § 125.3 Exports of classified technical data and classified defense articles.

(a) A request for authority to export defense articles, including technical data, classified by a foreign government or pursuant to Executive Order 12356, successor orders, or other legal authority must be submitted to the Directorate of Defense Trade Controls for approval. The application must contain full details of the proposed transaction. It should also list the facility security clearance code of all U.S. parties on the license and include the Defense Security Service cognizant security office of the party responsible for packaging the commodity for shipment. A non-transfer and use certificate (Form DSP-83) executed by the applicant, foreign consignee, end-user and an authorized representative of the foreign government involved will be required.

(b) Classified technical data which is approved by the Directorate of Defense Trade Controls either for export or re-export after a temporary import will be transferred or disclosed only in accordance with the requirements in the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed). Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Directorate of Defense Trade Controls must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless